

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DERICK MURPHY,	:	
	:	
Petitioner,	:	21-cv-00112 (JSR) (SN)
	:	18-cr-00848 (JSR)
-v-	:	
	:	<u>ORDER</u>
UNITED STATES OF AMERICA,	:	
	:	
Respondent.	:	
-----	x	

JED S. RAKOFF, U.S.D.J.

On May 16, 2022, the Honorable Sarah Netburn, United States Magistrate Judge, issued a Report and Recommendation in the above-captioned matter recommending that the Court deny petitioner Derick Murphy's petition for a writ of habeas corpus.

Petitioner has failed to file any objection to the Report and Recommendation, and, for that reason alone, has waived any right to review by this Court. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir.2002); Spence v. Superintendent, Great Meadow Corr. Facility, 219 F.3d 162, 174 (2d Cir.2000). Moreover, the petition was untimely and the merits of petitioner's claims do not establish that federal habeas relief is warranted based upon his failure to meet the two-prong test for ineffective assistance of counsel as outlined in Strickland v. Washington, 466 U.S. 668 (1984). Accordingly, the Court hereby adopts the Report and Recommendation, and, for the reasons therein, dismisses Murphy's habeas petition with prejudice. In addition, no

certificate of appealability shall issue because petitioner has not made a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253. The Court also certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith and therefore permission to proceed in forma pauperis is denied. See Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir.2005). Clerk to enter judgment.

SO ORDERED.

Dated: New York, NY
June 10, 2022


JED S. RAKOFF, U.S.D.J.